



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 CIVIL APPLICATION NO. 8599 OF 2025
IN FA/2085/2020
WITH
CIVIL APPLICATION NO. 8600 OF 2025
IN FA/1856/2022

SHIVA YASHWAR KASAR AND ORS
VERSUS
SONGIR VIDYA PRASARAK MANDAL, SONGIR, DHULE AND ORS

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Advocate for Applicant : Mr. P.D. Bachate h/f. Chaudhari N. L.
Advocate for Respondents : Adv. Mahesh S. Deshmukh for the non-applicant
nos.1 to 4, 6,7, 9 to 13.
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CORAM : Y.G. KHOBRAGADE, J.
DATE : 06.03.2026

PC.:-

1. Heard Mr. Bachate, the learned counsel appearing for the applicants and Mr. Deshmukh, the learned counsel appearing for the non-applicant nos.1 to 4, 6,7, 9 to 13. The name of non-applicant no. 5 is deleted on account of his death.

2. By the present applications, the applicants who are appellant nos.1 to 3 in first appeal have prayed for permission for production of documents i.e the copy of Judgment and order dated 16.04.1994 (date wrongly mentioned as 15.04.1994 in petition) passed by the learned Assistant Charity Commissioner, Jalgaon and Copy of Exh. 41 i.e. Membership Register

of the Education Trust namely Songir Vidyaprasarak Mandal. By the order dated 30.09.2011, the learned Assistant Charity Commissioner, Dhule has rejected the Scheme of Songir Vidyaprasarak Mandal in application nos. 8/1991 & 9/1991 under Section 50-A(1) of Bombay Public Trust Act now Maharashtra Public Trust Act.

3. The learned counsel appearing for the applicants canvassed that applicants have filed scheme application nos.19/2010 and 05/2011 before the learned Assistant Charity Commissioner, Dhule for framing of the scheme of Songir Vidya Prasarak Mandal but said scheme was rejected by the learned Assistant Charity Commissioner vide its order dated 30.09.2011. Therefore, the applicants filed scheme application nos.8/1991 and 9/1991. It is further canvassed that, while passing the order dated 30.09.2011 and while adjudicating the scheme in application nos.19/2010 and 05/2011, the learned Assistant Charity Commissioner, Jalgaon referred the order dated 16.04.1994 passed in Inq. Nos. 8/91 & 9/91. Further, on 11.07.2018, while deciding Misc. Application Nos.144/2011 and 145/2011, the learned District Judge, Dhule considered the order passed in scheme application nos.8/1991 and 9/1991. Therefore, it is necessary to bring the said fact to the notice of this Court while deciding the issue involved in the appeal, hence, production of documents has been sought.

4. Per contra, the non-applicants have filed the reply affidavit and strongly opposed the application on the ground that, the first appeal is in continuation of the original proceeding under the Maharashtra Public Trust Act and there is no provision for production of additional documents in appeal.

5. The learned counsel appearing for the non-applicants canvassed that, the applicants are seeking permission for production of the Judgment and order dated 16.04.1994 passed by the learned Assistant Charity Commissioner, Jalgaon in scheme application nos.8/1991 and 9/1991. However, on 30.09.2011, the learned Assistant Charity Commissioner passed an impugned order referring the order dated 16.04.2011, therefore, the documents sought for production are not necessary for the adjudication of the dispute involved in the present appeal and if the applicants are permitted to produce the said documents on record, at this juncture, it will lead to adduce additional evidence, hence, prayed for rejection of the application.

6. Needless to say that, by the present applications, the applicants are seeking permission for production of documents i.e. (1) copy of Judgment and order dated 16.04.1994 passed by the learned Assistant Charity Commissioner, Jalgaon in inquiry nos.8/1991 and 9/1991 and (2) copy of Exh. 41 i.e., Membership Register of Songir Vidya Prasarak Mandal. However,

while passing the order dated 30.09.2011, the learned Assistant Charity Commissioner considered the order dated 16.04.1994 passed in Inq. Nos. 8/91 & 9/91.

7. It is well settled principle of law that, the judgment and order passed by the competent Court can be referred as reference while deciding the cause or point of law, however, the documents which were not produced before the Trial Court or the First Appellate Court can not be permitted to produce at the belated stage. Order 41 Rule 27 of Code of Civil Procedure provides that, parties are not entitled to produce additional evidence in appeal as a matter of right. However, such evidence may be permitted where i) the Trial Court has wrongly refused to admit evidence, ii) the evidence was not within the knowledge of the party or could not be produced despite due diligence or iii) the appellate Court requires the same to enable it to pronounce judgment or for any other substantial cause. The Court must record reasons while allowing such evidence.

8. Needless to say that, the documents which have been sought for production are not proved before the learned Assistant Charity Commissioner, nor those documents were produced before the learned District Judge. The applicants have not brought any material on record to show that they were not having knowledge about the documents for production are sought and no

explanation has been offered by the applicants for not producing the same before the Trial Court or the First Appellate Court. Therefore, I do not find that there is necessity to permit the applicants for production of said documents on record. Accordingly, civil application nos. 8599/2025 and 8600/2025 are hereby rejected.

9. Call R & P of both the first appeals from the trial Court.

[Y.G. KHOBRAGADE, J.]